

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

MAINE LOBSTERMEN'S
ASSOCIATION, INC.,

Plaintiff,

and

STATE OF MAINE, DEPARTMENT
OF MARINE RESOURCES, *et al.*,

Intervenor-Plaintiffs,

v.

NATIONAL MARINE FISHERIES
SERVICE, *et al.*,

Federal Defendants,

and

CONSERVATION LAW
FOUNDATION, *et al.*,

Intervenor-Defendants.

Case No. 1:21-cv-2509 (JEB)

STIPULATION TO SETTLE
INTERVENOR-PLAINTIFF
MASSACHUSETTS LOBSTERMEN'S
ASSOCIATION'S CLAIM FOR
ATTORNEYS' FEES AND COSTS AND
~~PROPOSED~~ ORDER

Intervenor-Plaintiff Massachusetts Lobstermen's Association ("MALA") and the National Marine Fisheries Service ("NMFS"); Gina Raimondo, in her official capacity as Secretary of Commerce; and Janet Coit, in her official capacity as Assistant Administrator for Fisheries, NMFS (collectively, "Federal Defendants"), by and through their attorneys, stipulate as follows:

WHEREAS, on September 27, 2021, Plaintiff Maine Lobstermen's Association filed its Complaint in the U.S. District Court for the District of Columbia, alleging, *inter alia*, that NMFS had failed to comply with the Endangered Species Act in issuing its May 27, 2021, Endangered

Species Act Section 7 Consultation on the: (a) Authorization of the American Lobster, Atlantic Bluefish, Atlantic Deep-Sea Red Crab, Mackerel/Squid/Butterfish, Monkfish, Northeast Multispecies, Northeast Skate Complex, Spiny Dogfish, Summer Flounder/Scup/Black Sea Bass, and Jonah Crab Fisheries and (b) Implementation of the New England Fishery Management Council's Omnibus Essential Fish Habitat Amendment 2;

WHEREAS, on December 22, 2021, MALA filed a motion to intervene (Dkt. 24) and this Court granted MALA's motion (12/23/2021 Minute Order);

WHEREAS, on December 28, 2021, MALA filed its Intervenor Complaint (Dkt. 31);

WHEREAS, on September 8, 2022, this Court denied Plaintiff's motion for summary judgment and granted Federal Defendants' cross-motion for summary judgment (Dkt. 75, 76);

WHEREAS, on September 21, 2022, MALA appealed this Court's September 8, 2022 decision to the U.S. Court of Appeals for the D.C. Circuit (Dkt. 84);

WHEREAS, on September 7, 2023, the U.S. Court of Appeals for the D.C. Circuit reversed this Court's judgment (Dkt. 90);

WHEREAS, on November 29, 2023, MALA filed a Motion for Attorney Fees and Costs (Dkt. 97);

WHEREAS, MALA and Federal Defendants agreed that they would attempt to resolve MALA's claim for fees and costs expeditiously, without further litigation, and on November 30, 2023, February 22, 2024, and March 29, 2024, the Court granted MALA's and Federal Defendants' joint motions to stay briefing on MALA's Motion for Attorney Fees and Costs (11/30/2023 Minute Order; 02/22/2024 Minute Order; 03/29/2024 Minute Order);

WHEREAS, MALA and Federal Defendants have agreed to the following settlement that they consider to be a just, fair, adequate, and equitable resolution of MALA's demand for attorneys' fees and costs;

WHEREAS, MALA and Federal Defendants agree that settlement of attorneys' fees and costs in this manner is in the public interest and is an appropriate way to resolve the dispute between them;

WHEREAS, MALA and Federal Defendants enter into this Stipulation without any admission of fact or law, or waiver of any claims or defenses, factual or legal;

ACCORDINGLY, MALA AND FEDERAL DEFENDANTS AGREE AND STIPULATE AS FOLLOWS:

1. Federal Defendants shall pay Intervenor-Plaintiff MALA a total of \$60,000.00 for attorneys' fees, costs, and other litigation expenses for this lawsuit.
2. Federal Defendants shall make the payment required by Paragraph 1 via electronic funds transfer.
3. No later than five (5) business days after the Court approves this Stipulation, MALA, through its counsel, shall provide counsel for Federal Defendants the following information necessary to process the payment set forth in Paragraph 1: the Intervenor-Plaintiff's name, the payee's name, the payee's address, the payee's bank name and bank address, the payee's bank account name and account number, the account type, the Automated Clearing House ("ACH") routing number or the American Banking Association ("ABA") routing number for FedWire payment, the bank routing transit number ("RTN"), and MALA's tax identification number. Upon the request of counsel for Federal Defendants, counsel for MALA shall provide additional information, if needed, to process the payment set forth in

Paragraph 1, or, if such information is not available, a written explanation under oath for the reasons such information is not available. Federal Defendants agree to submit all necessary paperwork for the processing of the attorneys' fees award within thirty (30) calendar days of the Court's approval of this Stipulation or the receipt of the information described in this Paragraph, whichever is later.

4. MALA agrees to accept Federal Defendants' payment of \$60,000.00 in full satisfaction of any and all claims for attorneys' fees and costs of litigation incurred in only this matter to date. MALA agrees that receipt of this payment from Federal Defendants shall operate as a release of MALA's claims for attorneys' fees and costs in only this matter to date.¹
5. MALA agrees to send confirmation of the receipt of the payment to undersigned counsel for Federal Defendants within fourteen (14) calendar days of such payment.
6. MALA acknowledges that under 31 U.S.C. §§ 3711, 3716, 26 U.S.C. § 6402(d), 31 C.F.R. §§ 285.5, 901.3, and other authorities, the United States will offset against the attorney fee award MALA's delinquent debts to the United States, if any. *See Astrue v. Ratliff*, 560 U.S. 586 (2010).
7. Federal Defendants reserve the right to contest fees claimed by MALA or MALA's counsel, including hourly rates and the number of hours billed, in any future litigation or continuation of the present action. Further, this Stipulation as to attorneys' fees and costs has no precedential value and shall not be used as evidence in any other attorneys' fees litigation.

¹ MALA has a pending EAJA fee application in *Massachusetts Lobstermen's Association v. NMFS*, No. 24-10332-WGY (D. Mass. 2024). The instant stipulation is to have no effect on that pending application.

8. Nothing in this Stipulation shall be interpreted as, or shall constitute, a requirement that Federal Defendants are obligated to pay any funds exceeding those available, or take any action in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any other appropriations law.
9. This Stipulation shall be binding on the parties and their successors, agents, designees, employees, and all those acting by and through their authority. The parties agree that this Stipulation was negotiated in good faith and that this Stipulation constitutes a resolution of claims that were denied and disputed by the parties. By entering into this Stipulation, the parties do not waive any claim or defense.
10. This Stipulation constitutes the entire agreement of the undersigned parties concerning the rights and obligations discussed herein. No other agreement shall govern the rights of the undersigned parties with respect to the matters resolved by this Stipulation, except in accordance with the terms herein.
11. This Stipulation is effective as of the date it is entered by the Court.
12. The undersigned representatives of each party certify that they are fully authorized by the parties they represent to agree to the terms and conditions of this Stipulation and do hereby agree to the terms herein.

Dated: April 29, 2024

Respectfully submitted,

ECKLAND & BLANDO LLP

/s/ Daniel J. Cragg (with permission)

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Counsel for Federal Defendants

IT IS SO ORDERED.



THE HONORABLE JAMES E. BOASBERG
UNITED STATES DISTRICT JUDGE

4/29/24